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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,452	02/27/2004	Shaibal Roy	11779-US-PAT (80239)	5182
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Allen, Dyer, Doppelt, Milbrath & Gilchrist - RIM 255 S. Orange Avenue Suite 1401 Orlando, FL 32801			EXAMINER WALSH, JOHN B	
			ART UNIT 2451	PAPER NUMBER
			NOTIFICATION DATE 11/25/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/789,452	<b>Applicant(s)</b> ROY, SHAIBAL	
	<b>Examiner</b> John B. Walsh	<b>Art Unit</b> 2451	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on RCE of 10/5/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-16, 18-28, 30-41, 43-47 and 49-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-16, 18-28, 30-41, 43-47 and 49-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-6, 8-16, 18-28, 30-41, 43-47 and 49-51 are rejected under 35 U.S.C. 101

because the claimed invention is directed to non-statutory subject matter.

Claims 1-6, 8-16, 18-20 and 49-51 are drawn to a system. Use of the word system does not inherently mean that the claim is directed to a machine. Only if at least one of the claimed elements of the system is a physical part of a device can the system as claimed constitute part of a device or a combination of devices to be a machine within the meaning of 101. The claims recite “a mobile office platform server”. However, a server is not explicitly drawn to a machine, wherein a server can encompass a server process, which is software alone. Thus the claim does not recite any physical part of a device and thus does not fall into the statutory category of a machine.

Claims 21-28, 30-41 and 43-47 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The claims recite

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“a mobile office platform server”. However, a server is not explicitly drawn to a machine, wherein a server can encompass a server process, which is software alone. Thus the claim does not recite any physical part of a device for performing the method steps.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6, 16, 28 and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6, 16, 28 and 41 recite the problem magnitude is assigned for an error based on network failures. However claims 6, 16, 28 and 41 are dependent upon claims 1, 11, 21 and 35 respectively, which recites the problem magnitude is based on errors not related to network failures. Therefore the claims contradict their base claim and render themselves indefinite.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6, 8, 21-28, 30, 49 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,559,505 to McNair.

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As concerns claims 1, 21, 49 and 50, a communications system comprising: a server (col. 3, lines 15-20; 111) comprising a database (117; col. 3, lines 30-35-memory or remote database) for storing problem magnitudes (col. 4, line 8-18-n number of attempts and function) relating to failed attempts at accessing servers using connection engines; and an intelligent routing engine (115) operative with the database for querying the database (col. 4, lines 15-20-table look up) and delaying any further attempts at accessing the server when the problem magnitude as a preset rate of decay (col. 4, line 10-exponential; abstract; fig. 2 and 3) exceeds a predetermined threshold (fig. 2 and 3; abstract), wherein a problem magnitude is assigned for an error based on failures unrelated to a network failure (col. 3, line 50-incorrect password).

As concerns claims 2 and 22, wherein said intelligent routing engine is operative for delaying any reattempts at accessing a server until a problem magnitude returns to below a predetermined threshold (fig. 3; attempts delayed until time period elapses).

As concerns claim 3, 23 and 40 any delay in reattempting access to the server is a function of a preset rate of decay of a problem magnitude (col. 2, lines 30-35; col. 4, lines 9-19-function dependent on n and t).

As concerns claims 4, 24, 25, 27 and 49, said database includes data relating to a current problem magnitude (col. 4, lines 17-18 – table for n ) for a failed access to a server that is added to a current exponentially decayed entry in the database (col. 4, lines 10-19; fig. 3; time increased for failed access).

As concerns claims 5 and 26, wherein said database includes data relating to a problem magnitude versus time (col. 4, lines 17-18 – table for n and t) for any server and connection engine pair.

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As best understood concerning claims 6, 28 and 41, wherein a problem magnitude is assigned for an error based on network failures (col. 3, line 50-incorrect password).

As concerns claims 8 and 30, failures unrelated to a network failure include an incorrect password and/or poorly formed request (col. 3, line 50-incorrect password).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9, 31 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,559,505 to McNair as applied above in view of U.S. Patent No. 7,251,065 to Bond et al.

McNair '505 do not explicitly disclose a proxy server.

The limitation of further limiting the routing engine to comprise a proxy server does not appear to materially affect or promote any of the functionality of the claimed invention and appears merely as a design choice. However, the prior art discloses the use of routing engines comprising a proxy server.

Bond et al. '254 teach a proxy server (col. 1, lines 24-26).

It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the system of McNair '505 with a proxy server, as taught by Bond et al.

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'254, in order to provide a means of increasing availability. Such a modification is a combination of known elements yielding predictable results.

9. Claims 10, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,559,505 to McNair as applied above in view of U.S. Patent Application Publication 2001/0032245 to Fodor.

McNair '505 does not explicitly disclose using POP, IMAP or httpmail protocol.

Fodor '245 teach using POP and IMAP protocols (0020) and SMTP (0018).

It would have been obvious to one having ordinary skill in the art to provide the system of McNair '505 with POP or IMAP protocols as taught by Fodor '245, in order to provide a protocol for a client to access email on a remote server. Such a modification is merely a combination of known elements yielding predictable results.

### ***Allowable Subject Matter***

10. The indicated allowability of the claims 1-6, 8, 21-28, 30, 49 and 50 are withdrawn in view of the newly discovered reference to U.S. Patent No. 5,559,505 to McNair. A rejection based on the newly cited reference is cited above.

11. Claims 11-16, 18-20, 34-41 and 43-47 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Thursday from 8:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John B. Walsh/  
Primary Examiner, Art Unit 2451